

EXHIBIT 1

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August 16, 2017

VIA E-MAIL ONLY

Ms. Barbara Kehoe
VA Offices of Chief Counsel
140 Fountain Pkwy N Suite 520
St. Petersburg, FL 337-16-1285

Re: ***John and Trisha Nugier v. 3M Company, et al.,***
U.S.D.C. Minn., MDL No. 15-2666 (JNE/FLN)

Dear Ms. Kehoe:

We represent Defendants, 3M Company and Arizant Healthcare Inc., in the above-captioned matter. This litigation involves a total knee arthroplasty performed upon Plaintiff, John Nugier, on March 7, 2012, at the Miami VA Medical Center and subsequent medical care, including a two-stage revision, at that facility related to a prosthetic joint infection. Plaintiff's claims against 3M relate to its patient warming system ("Bair Hugger™") used in the surgery. Plaintiff does not present any claims against the Miami VA Medical Center or any of its related healthcare providers. Likewise, Defendants do not assert that any action on the part of the Miami VA Medical Center or any of its healthcare providers was a cause of Plaintiff's claimed injuries.

Please find attached Defendants' Notice of Video-Taped Deposition of Henry Bernstein, MD, and Subpoena Duces Tecum. We are writing pursuant to 5 U.S.C. §301 and 38 C.F.R. § 14.800, et. al ("Touhy Regulations") to request the in-person deposition of Dr. Bernstein. We are enclosing for your review a HIPAA-compliant medical authorization related to the Miami VA Healthcare System.

Dr. Bernstein is an orthopedic specialist who was the attending physician and surgeon during Plaintiff's total knee replacement of March 7, 2012, and the two subsequent revision surgeries on July 25, 2012, and October 28, 2012, to address Plaintiff's prosthetic joint infection and revise his total knee arthroplasty, respectively. Dr. Bernstein was the only surgeon involved in all three procedures and, accordingly, his knowledge cannot be obtained through other witnesses. His role in Mr. Nugier's surgery, care and treatment, and his experience with the Bair Hugger patient warming system that is at the center of this lawsuit, are critical to a full and fair presentation of the issues in this case:

- Dr. Bernstein has personal knowledge of Plaintiff's medical history, care and treatment as referenced above, and result following surgical intervention.

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- He has personal knowledge of the physical layout of the operating room and the personnel and medical devices in use.
- He also has specialized knowledge of the benefits and risks associated with total knee arthroplasty, including the possibility of infection, which were discussed with Plaintiff prior to his March 7, 2012 surgical procedure.
- Finally, Dr. Bernstein has experience with the Bair Hugger patient warming system, knowledge of its use during that March 7, 2012, surgical procedure, and likely knowledge of its safety and efficacy – all of which must be developed as part of the discovery process.

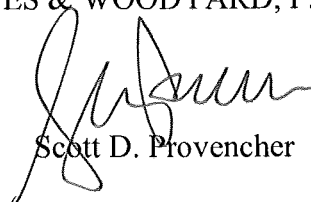
In reviewing the Touhy Regulations, and specifically the considerations of §14.804, we are agreeable to flexibility in the date and start time of Dr. Bernstein's deposition, even after business hours if necessary. We understand his time is important in the care of our veterans and do not believe his deposition would be an undue burden under the considerations of subsections (a) and (d). Dr. Bernstein's factual testimony pursuant to a lawful subpoena is appropriate under subsections (e) and (m). His deposition will not cause the government to favor or endorse the position of either party in this litigation under subsections (i) and (j). Finally, the demand is sufficiently specific to be answered as addressed in subsection (n).

Thank you for your consideration of this request. If you have questions or need additional information, please do not hesitate to ask. We look forward to hearing from you regarding the position of the Miami VA Medical Center on this request.

Very truly yours,

MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, P.L.L.C.

By



Scott D. Provencher

SDP:cr
Enclosures